IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.787 of 2007

Duraipandy .. Petitioner

Vs

1. The Secretary to the Government
   Food, Co-operation and Consumer
   Protection Department, Chennai-9.

2. The District Collector and
   District Magistrate,
   Madurai District, Madurai.

3. The Addl. Secretary to the Government
   of India, Food, Co-operation and
   Consumer Protection Department,
   Room No.270, Krishi Bhavan, New Delhi. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.V.Parthiban

For Respondents : Mr.Paul Noble Devakumar
Government Advocate for RR1 & 2
Mr.D.Kumaresan, ACGSC for R.3

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner, who is the father of the detenu, Moorthy, who was detained at Central Prison, Madurai, pursuant to the order of detention dated 10.3.2007 passed under Sections 3(2)(a) read with 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, (Act 17 of 1980) branding him as 'Black Marketeer', has filed this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention dated 10.3.2007 passed by the second respondent in C.M.P.No.1 of 2007 (CS) against the petitioner's son, Moorthy, to set aside the

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same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. According to the detaining authority, viz., the second respondent, the ground case is said to have taken place on 19.2.2007. On receipt of credible information that the provisions of Essential Commodities Act, 1955, are being violated or may be violated, the District Supply Officer along with the police party, conducted vehicle check near Bykara Arch in Madurai City, during which a lorry was intercepted and 205 bags of rice meant for Public Distribution System were found in that lorry. During interrogation, the detenu gave a voluntary statement admitting the offence, on the basis of which a case was registered in Madurai CSCID Cr.No.112/07 under Section 6(3)(4) of TNSC (RDCS) Order 1982 read with Section 7(i) a (ii) of Essential Commodities Act, 1955 and under Sections 409 and 414 I.P.C. The detenu was arrested and sent for judicial remand.

3. Alleging that the activities of the detenu are prejudicial to the maintenance of supplies of essential commodities, under the Public Distribution System, the detention order was clamped on the detenu under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, branding him as 'Black Marketeer'. Hence, the present petition.

4. Mr.V.Parthiban, learned counsel for the petitioner challenges the impugned order of detention dated 10.3.2007 mainly on the ground of delay in considering the representation dated 20.3.2007 made on behalf of the detenu. Hence, we do not propose to go into the other aspects of the case.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the Government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

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5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. Coming to the the case on hand, admittedly, objecting to the order of detention dated 10.3.2007, a representation was made on behalf of the detenu on 20.3.2007, which was received by the Government on 23.3.2007. Remarks were called for from the detaining authority on 26.3.2007, which was received by the detaining authority on 27.3.2007. The detaining authority, in turn, called for parawar remarks from the sponsoring authority on 28.3.2007 and on receipt of the same on 30.3.2007, the detaining authority sent it to the Government on 4.4.2007. The file was circulated on 12.4.2007 and the same was considered by the Under Secretary, Deputy Secretary, Secretary (CF & CP) and Secretary (Law) on 13.4.2007 itself. It is astonishing to notice from the records that the Minister concerned dealt with the file only on 20.4.2007, after seven days, which is also not properly explained. Even taking note of the intervening holidays, viz., 14.4.2007 and 15.4.2007 (being Saturday and Sunday), the delay of five days in considering the representation by the Minister concerned is admittedly unexplained and inexcusable.

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7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the

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representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

9. In the instant case, there is delay of five days in considering the representation, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the order of detention dated 10.3.2007 is set aside. The detenu Moorthy is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1. The Secretary to the Government
   Food, Co-operation and Consumer
   Protection Department, Chennai-9.

2. The District Collector and
   District Magistrate,
   Madurai District, Madurai.

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3. The Addl. Secretary to the Government
of India, Food, Co-operation and
Consumer Protection Department,
Room No.270, Krishi Bhavan, New Delhi.

4. The Superintendent,
Central Prison, Madurai.

5. The Public Prosecutor, High Court, Madras.

6. The Joint Secretary to Government, Public [Law and Order] Department, Fort St. George, Chennai 9.

+ 1 CC To Mr. C. Prakasam, Advocate SR NO.51255

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